

VU Research Portal

Transnational Families Navigating the Law

de Hart, Betty; Sportel, I.D.A.; Kulk, F.

published in

Wellbeing of Transnational Muslim Families
2019

DOI (link to publisher)

[10.4324/9781315231976-6](https://doi.org/10.4324/9781315231976-6)

document version

Publisher's PDF, also known as Version of record

[Link to publication in VU Research Portal](#)

citation for published version (APA)

de Hart, B., Sportel, I. D. A., & Kulk, F. (2019). Transnational Families Navigating the Law: Marriage, Divorce and Wellbeing. In M. Tiilikainen, M. Al-Sharmani, & S. Mustasaari (Eds.), *Wellbeing of Transnational Muslim Families: Marriage, Law and Gender* (Studies in Migration and Diaspora). Routledge.
<https://doi.org/10.4324/9781315231976-6>

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal ?

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

E-mail address:

vuresearchportal.ub@vu.nl

6 Transnational families navigating the law

Marriage, divorce, and wellbeing

Iris Sportel, Betty de Hart and Friso Kulk

Introduction

In the rich and varied literature on transnational families, the role of the law in their everyday lives generally escapes attention. Although transnational families are, in their everyday activities and relationships, at least potentially influenced by multiple sets of laws and institutions (Levitt and Glick Schiller, 2004) which may involve plural and fundamentally different legal systems and normative orderings, we know relatively little about how transnational families are confronted with the law, how they use the law, and how it impacts their everyday lives. This is remarkable, as many life events, such as marriage, divorce, or the birth of children, are not just intimate family matters, but also legal matters. For members of transnational families, this often means dealing with legal systems from multiple countries. In this chapter, we aim to contribute to the literature on transnational families by drawing attention to the role of law. We do this by shedding light on how transnational Dutch-Moroccan and Dutch-Egyptian families relate to multiple family law systems in cases of marriage and divorce. How do family members experience the legal regulation of intimate relationships? How do they navigate between two family law systems and with what results? We specifically examine how the process of navigating the law is related to their wellbeing.

We start with a brief theoretical note on the relationship between law and wellbeing, followed by some background information on Dutch-Moroccan and Dutch-Egyptian transnational families, our research methods, and the interlocutors. Subsequently, we will go into more detail on three dimensions of wellbeing and the law for transnational families. Lastly, we will look at differences between the interlocutors in how they dealt with the law, particularly the resources needed for dealing with bureaucracy and inequalities in access.

Law and wellbeing

Although it is often assumed that law is related to wellbeing, there is very little work on what this relationship looks like. Furthermore, the existing literature has mostly perceived this relationship from the narrow angle of how

the law best serves the interests of transnational family members. Accordingly, the focus has been mainly on tangible outcomes such as accessibility of legal systems and access to justice (in terms of available information about the law and obstacles related to a lack of financial resources); the need to make family members' legal position similar in the two countries to avoid so-called 'limping' legal situations (being married or divorced in one country and not in the other) (Van Den Eeckhout, 2000; Kruiniger, 2015; Rutten, 2004); and finally, accommodation of cultural and religious claims in law (Foblets, 1997; Hoekema and van Rossum, 2010).

Instead, we seek a more complex and layered understanding of the relationship between law and the wellbeing of transnational families. Drawing on the approach proposed in the introduction of this volume, we examine the wellbeing of transnational families and its interplay with law as a multi-dimensional process, comprising material, relational, and ethical aspects. With regard to the material aspects of wellbeing, we shift the direction of our gaze from formal laws that can be found in law books and courts to the more mundane work of documents and bureaucracy with which transnational family members have to deal. Law comes to them often in the form of documents that have to be acquired or submitted (e.g. marriage or birth certificates) in order to make actual family relationships into legal facts (a valid marriage or a registered birth).

We approach the relational aspect of wellbeing through the notion of 'kin work'. For members of transnational families managing kin ties in two countries often requires legal work, such as arranging passports or visas for family visits or ensuring the legal validity of a marriage or divorce. The extent to which family members engage in such legal work may also depend on the closeness of their transnational ties. In this respect it is relevant to keep in mind that transnational families are not always cooperative units and kin ties are not stable. Like all families, transnational families are full of tensions, conflict, power relationships, and inequalities (Dreby and Adkins, 2010). Events such as death, marriage, or divorce transform kin ties, and may not only strengthen, but also sever them. In this context, law may also be purposely used to sever kin ties, especially, but not only, in cases of family break-up (Morano-Foadi, 2007). Using the term *managing* kin ties encompasses both the maintenance and obstruction or severance of family ties through law.

Third, in the ethical dimension, law is just one of the systems of meaning pertinent to the lives of transnational families. Transnational couples live in a complex normative context, made up from their own and their partners' wishes and desires, those of two extended families, public discourses on religion and migration, the legal regulations of two (or even more) states, as well as culture and religion. The complexity of the diverse normative contexts implies that there is no clear-cut relationship between the norms and values that people cherish and their expectations of the law. Rather, we found that transnational family members navigate this complex normative context, often

trying to avoid conflict and friction with the multiple actors in this environment and choosing pragmatic solutions.

For all these three dimensions of wellbeing, the processes through which family relationships and rights are negotiated between individual members of the families on the one hand, and vis-à-vis state laws and institutions of two (or more) countries on the other hand, vary. Dealing with the law requires financial, social, and language resources. Hence, it is related to inequalities based on gender, ethnicity, nationality, and/or social class.

Dutch-Moroccan and Dutch-Egyptian transnational families

We understand transnational families to include not only spouses, parents, and children, but also the extended family (in-laws, grandparents) living across borders. Labelling them transnational families means only that members of these families have crossed borders and potentially encountered two family law systems; we cannot reach any conclusions about the extent to which they actually lead transnational lives or identify transnationally; this differs significantly for individual cases.

Moreover, we move beyond a singular understanding of transnational Muslim families by researching diverse categories of families. Our research sample includes families where one of the partners migrated from Morocco or Egypt to the Netherlands or vice versa. We include persons who in the Netherlands are labelled 'second-generation migrants': in our case they are persons of migrant origin, born in the Netherlands, with or without Dutch citizenship, who marry a partner from the country of origin of the parents.¹ We also include so-called 'mixed families', where a Dutch-born man or woman concludes a marriage with a partner from Morocco or Egypt.² Generally, these two groups are perceived very differently and are thought to be incomparable. In our view, however, the two research groups are similarly situated in several respects: as families where one partner migrated, who have family ties in at least two countries, and who potentially come into contact with two different legal systems and institutional arrangements. For the non-migrant partner transnationality may not be central in their lives, and they may never visit the other country. However, following Levitt and Jaworsky (2007, p.132) we claim that they live in households where people, values, goods, and claims from somewhere else – including family law – are likely to be present on a daily basis. Comparing these two different research groups enhances our insights into the role of law in the lives of transnational families.

Furthermore, we put forward a dynamic understanding of the category of 'Muslim', based on the diverse experiences of our interlocutors concerning Islam and its normative significance in their lives. In some of the families in our research, both partners considered themselves Muslim. Some were religiously mixed (Christian-Muslim or non-religious-Muslim), while in other families the non-Muslim partner converted to Islam.

Moroccan migrants and their children are one of the largest immigrant groups in the Netherlands, and they are predominantly of Muslim background. They mostly marry spouses from the same ethnic group, although the number of migration marriages (i.e., marriages with a partner from Morocco not already living in the Netherlands) has dropped significantly in the last 15 years due to changing patterns of family formation and immigration restrictions.³ People of Egyptian descent form a much smaller migrant group in the Netherlands, with a significant Christian minority and a larger percentage of mixed marriages, evidenced by the fact that over half of the 'second-generation children' are from a mixed relationship.⁴ Little is known about Dutch migrants living in Egypt and Morocco. Estimates are that around 600 Dutch nationals live in Morocco, and around 1,500 Dutch nationals in Egypt.⁵

Methodology

We interviewed couples and divorcees living in Morocco, Egypt, or the Netherlands on their experiences with the different family law systems. Our multi-sited research enabled us to study the reciprocal connections between the Netherlands and Morocco, and between the Netherlands and Egypt. Interviews took place in two sub-projects: one dealing with marriage and the legal relationships between parents and children (33 interviews with parents), the other with divorce (26 interviews with spouses).⁶ In addition, around 40 professionals involved in legal matters relevant to transnational families, such as lawyers, embassy personnel, translators, and NGO representatives were interviewed. The interviews were conducted in the period from 2008 to 2012.

We approached the interlocutors in a variety of ways: through our own networks and through (online and offline) networks of NGOs, migrant communities, and lawyers. For the project on divorce, we also approached the interlocutors through the Dutch courts and by contacting lawyers of published court cases. Lastly, we spent time at locations and events relevant to transnational couples, especially for the Dutch communities in Morocco and Egypt. Most interviews were held in Dutch, others in (mixtures of) Arabic, French, or English. They lasted from 45 minutes to four hours. Most interviews took place at the homes of the interlocutors, others at the homes of family members or friends, at the workplace, or in cafés.

It is not easy to provide a profile of our research group due to the interlocutors' diversity and mobility. The country of residence serves as an example. While 16 interviews were conducted in Morocco, 13 in Egypt, and 29 in the Netherlands, not everyone lived in the country in which they were interviewed. A considerable proportion of the interlocutors had moved from one country to the other, or even to a third country, during their marriage or after divorce.⁷ There were also important differences between the interlocutors for the two sub-projects, especially in terms of education, employment, and income.

Table 6.1 Overview interlocutors

	<i>Parenthood</i>		<i>Divorce</i>		<i>Total</i>
Background	Dutch-Moroccan	Dutch-Egyptian	Dutch-Moroccan	Dutch-Egyptian	
Number of interviews	20	13	15	11	59
Mixed marriages	14	13	6	11	44⁸
Migration marriages	6	0	9	0	15
Number of interlocutors ⁹	29 (18 women/ 11 men)	17 (12 women/ 5 men)	15 (12 women/ 3 men)	11 (9 women/ 2 men)	72 (50 women/ 22 men)

Although the majority of the interviewees had completed some form of higher education, the interlocutors in the research group on parenthood were, generally speaking, more highly educated than the divorcees. In the case of most of these couples, both partners had paid employment, and in half of the cases, both spouses earned enough to be financially independent. In the divorcee group, however, only a small minority of the families (4) had two partners with a substantial income, and in most of these families (18) one of the spouses was the main or sole provider: both men (10) and women (8).¹⁰ Despite considerable efforts, we did not manage to find enough male participants to attain a gender balance, especially for the interviews on divorce. The interlocutors were also a very diverse group with regard to age, ranging from early twenties to late seventies.

The material dimension of wellbeing

Family law is not just about court procedures and conflicts, but also, and perhaps more so, about everyday legal paperwork such as arranging the documents for a marriage or registering the birth of a child or the death of a relative. Many authors assume that, in dealing with bureaucracy and law, transnational families want ‘the best of both worlds’, acting strategically to maximize their position in dealing with multiple legal systems in which rights and obligations differ (Ackers and Dwyer, 2004; Foblets, 1998; Jansen Frederiksen, 2011). However, in our research we found little evidence of such strategic behaviour: most people had no (long-term) strategic plan, but rather obtained information and took legal steps as they went along.

For example, when a Dutch-Moroccan husband wanted to register the birth of his first child in the Netherlands, the Dutch civil registry warned him that the spelling of the child’s name would not be accepted in Morocco. This

would mean that the Moroccan authorities would refuse to register the child and it would consequently not acquire Moroccan citizenship.

[Husband:] At first I wrote it differently. In French. They took the book [of names accepted by Morocco], looked it up, and said: “you’d better spell this differently”. And I reacted a bit and said: “I’ll decide myself how I name my son”. And the lady said: “I only want to warn you. If you go to the consulate, they will refuse” (Mimoun, October 2011).¹¹

Having learned from this experience, the couple took a different approach with the next two children and went to the Dutch civil registry during the wife’s pregnancy to choose a name from the Moroccan ‘name book’.

As this example illustrates, transnational families tend to come into contact with bureaucracies of two (or more) countries, and are confronted with requirements in both bureaucracies that at times contradict each other. Steps taken in one country are not automatically known or valid in the other country; legal status such as marriage or even the name of a child can be different in the two countries involved. Furthermore, documents such as marriage or birth certificates often need to be officially translated and legalized by embassies or a Ministry of Justice before they can be used in the other country. Dealing with bureaucracy in two countries thus not only involves ‘double work’, but also complicates the work that needs to be done.

Consequently, documents have an independent meaning both in legal practice and social life, constituting family relationships both in a legal and a social sense (Kulk, 2013; Yngvesson, 2006; Hegel-Cantarella, 2011; Mulla, 2011). Moreover, because of the interconnectedness of family law and migration law, family law status may have consequences for residence and nationality: without a valid marriage there may be no possibility of family reunification or a child may not acquire the citizenship of the father. It is therefore not surprising that an important part of the stories of our interlocutors was about their dealings with bureaucracy. For example, a Dutch-Egyptian couple explained the process they went through to marry in the Netherlands:

H: I think all that I needed from here was my birth certificate. And what did I need, you remember? [to wife]

W: You needed a document that you were not married before.

H: I mean besides this?

W: You needed the documents that you didn’t have a criminal record ... and you needed to come to Holland to have a meeting with the immigration police.

H: That wasn’t very smart from them. Because in Holland, they assumed that because I’m a foreigner, we’re going to live in Holland. This was not the case ... And it was actually annoying at the time. It was in the middle of the semester here. So it was really in the middle of my work. And

[wife] insisted that I have to come because it was one of the procedures to get married. And I have to meet the police for it. And when I went there, well, she asked me for my passport. I give her my passport and she gave me a stamp and she said: "Mister, you can stay now for six months". I said: "I'm sorry; I have to leave in two days, back to Egypt. I can't stay for six months. Why?" Then she [immigration officer] finally understands that we were not going to live actually in Holland. ... And that was the only reason for me to get a plane ticket to Holland, and one week to get out from my work, from my annual leave, just to go there to discover that it was a misunderstanding (Farouq and Brigitte, October 2010).

This interview excerpt illustrates three important points. First, it shows the complexity of the procedures and the difficulties in acquiring the correct legal information. As the couple was inquiring about the necessary steps, the Dutch authorities assumed that they would want to establish life in the Netherlands, and thus started the migration procedure to make that possible. It was only after spending significant amounts of time, energy, and money, that it became clear that it had not been necessary. Second, it shows how an important part of the legal and bureaucratic work by the interlocutors is aimed at managing kin relationships. Even though marrying in Egypt, where the couple was going to live, would have been more practical, the couple wanted to marry in the Netherlands to enable the wife's mother, who was ill and could not travel, to attend the wedding. In other words, this legal process was a form of 'kin work'. We will elaborate on this concept in the next section.

Legal work as kin work: the relational dimension

The literature on transnational families discusses the means needed to maintain family across borders: family visits, telephone calls (Horst, 2006) and the Internet (Vertovec, 2004), sending remittances or gifts (Tilly, 2007), sharing productive and caring work (Wilding, 2006), rituals and material culture (Zontini, 2004), and emotional and moral support (Gardner and Grillo, 2002). All these activities to maintain family ties have been labelled 'kin work': the conception, maintenance, and ritual celebration of cross-border household ties (Baldassar, 2007).

The law is one of the factors shaping transnational ties between those migrating and those staying in the country of origin (di Leonardo, 1987). However, we know little about how law shapes transnational family relationships and family dynamics, as this issue is rarely studied systematically (de Hart, van Rossum and Sportel, 2013; Dreby and Adkins, 2010; Mazzucato and Schans, 2011). Nevertheless, dealing with law is necessary for the conception, maintenance, and ritual celebration of kin ties across borders. A lot of the activities to maintain family ties, such as family visits, care, or marriage celebrations in the home country are not possible without some form of

dealing with the law. Consequently, the law can be a tool to maintain kin ties, but also a hindrance to doing so.

For instance, the family visit. While migration law and citizenship are well known in enabling or, rather, frustrating people in maintaining family relationships by family visits, family law status is equally important. When parenthood (e.g., paternity or parental authority) is not legally established or not recognized in a country, parents may not be able to enter or leave with their children. Moreover, unmarried sexual relationships are illegal in Egypt and Morocco, and remarriage after a divorce that is not legally recognized may lead to prosecution for bigamy.

These were some of the issues Dutch-Moroccan Naima faced when she wanted to visit her family in Morocco with her new partner and their child. Years earlier, she had been pressured by her family into marrying a Moroccan spouse during the summer holidays, while still underage. After conducting a legal marriage in Morocco, Naima returned to the Netherlands, where she was supposed to start the migration procedure for her husband to join her. However, she managed to postpone the wedding event – that would make them socially married – and registering the marriage in the Netherlands until she had graduated from high school. After spending another summer in Morocco, she decided that she did not want to start married life. This meant a significant breach with the life she had had before:

And then I left home. I wandered. I saw all the dark sides of life For me, nobody existed. They [family and husband] were just in Morocco, it did not bother me. And I did not register in the Netherlands that I was married or anything. Just did not register it. Because I did not plan to continue with him anyway. ... And then I met my [new] partner. ... And I got pregnant. And *that's* when it came back. Because then I had a big problem. Now I was not only married, but I was married in Morocco *and* I was in the Netherlands *and* I was pregnant from another man. ... When the child was a few months old, I thought: now I have to go to Morocco and start the court case [for divorce], or I'll never get rid of it (Naima, November 2009).

In the period before the Moroccan family law reform of 2004, divorce was not easy. The process took several years, during which Naima was afraid to take her child to Morocco:

N: All that time I was afraid that he [husband] would find out that I had a child.

I: You never took the child to Morocco?

N: No, and I hated that. Because I felt like: it's my child. You want to show your child to your family, show your country. I love Morocco as well. It was dreadful. And his father is a Turk, by the way. And we went there [to Turkey] on holiday in the summer. But I could not take them to Morocco.

Naima's complex story demonstrates that although she initially avoided Morocco and Moroccan family law, this no longer worked when she had a new partner and a child because she wanted to maintain her transnational ties with Morocco and her family there.

Hence, relationships with family and friends are a major motivator to do legal work across borders. While most divorced interlocutors arranged for divorce in their country of residence, only some of them also arranged the divorce in the other country to which they had transnational ties or intended to do so in the future. In the absence of such transnational links to the other country, the interlocutors simply saw no need to go through the trouble of arranging the divorce there. However, it is important to stress that the presence or absence of such ongoing transnational ties cannot be presupposed based on ethnic background. Some migrant spouses in our study had lost all ties to their country of origin, whereas some non-migrant informants greatly valued the connections they had built in the country of origin of their former spouse.

The ethical dimension

In the academic literature on migrants in Europe, it is often assumed that dealing with family law is strongly shaped by religious or cultural ethical considerations in which migrants want the law of their 'own culture' or religion applied to their family (see for example: Foblets and Verhellen, 2000; Menski, 2001; Yilmaz, 2002). In the Dutch context, issues like 'sharia wills', the possible presence of 'sharia courts' (Bakker, et al., 2010), and the application of 'Islamic' foreign family law by Dutch judges have caused intense public and political debate (Van Den Eeckhout, 2003; Sportel, 2017). However, this focus on the 'accommodation' of culture and religion in law was far less prominent in our interviews than one would have expected based on this literature. While for some interlocutors religion was an important part of their everyday life, with some impact on how they dealt with the legal aspects of their family relationships, religious accommodation was hardly raised as an issue by respondents. Rather than expecting the law to accommodate their religious wishes, the informants tried to solve normative issues in pragmatic ways, navigating multiple legal systems, social networks, and practical concerns (Kulk, 2013; Storms and Bartels, 2017; Vigh, 2009). Just like transnational ties, religiosity cannot be presupposed based on the ethnic background of the partners. One Moroccan non-religious woman complained that her Dutch ex-husband took his new faith far too seriously after he converted to Islam for the sake of their marriage. Conversely, some Dutch informants had already converted before meeting their spouse, and were explicitly looking for a Muslim partner.

This does not mean that religious and ethical concerns were entirely absent. Most importantly, religion played a role in the decision to get married rather than choosing cohabitation, which in recent years has become a popular

family form in the Netherlands.¹² Some informants valued getting married before living together as part of their religious obligations. For other couples it was their families or social environment that encouraged an early marriage. As a Dutch woman living in Egypt explained:

When we started a relationship together, we got married ‘*urfi* straight away. Because here, in [city], well, they keep an eye on you. And [husband] is someone from, not a good family, but a middle-class family. Where reputation is very [important]. He did not want to be addressed by a police officer: “Can I see your papers?” He wanted to be able to show [the papers]. So we conducted the ‘*urfi* right away. ... For me it did not feel like a marriage at all. More like, well, we have the right papers and, and now we can just be on the streets together, rent an apartment together. It felt more like living together (Petra, October 2010).

In this case, getting married was necessary to be able to be together in public spaces without damaging the family’s reputation or being harassed by local authorities. An informal ‘*urfi* marriage, which this informant believed had no legal value, meant that they could fulfil the community’s demands. It also served her own interests, as she did not want to enter into a ‘real’, formal marriage so soon and without living together first.

Furthermore, as this quotation also shows, in Morocco and Egypt, state prohibitions of sexual relations outside marriage are key in couples’ decisions to get married. Especially in Egypt, unmarried sexual relationships are actively policed, particularly in tourist areas, when showing affection in public, or checking into a hotel together (Behbehanian, 2000). This is why many couples conducted informal ‘*urfi* marriages, sometimes only a few days or weeks after meeting. Later, when the relationship proves to be stable, and especially when children are born, they formally register the ‘*urfi* marriage with the Egyptian authorities.

Another potential topic of ethical and religious considerations is religious conversion. While many of the native Dutch partners at some point converted to Islam, most of them described this primarily as a pragmatic step. For example, in Morocco or Egypt religion is relevant in inheritance law (Muslims and non-Muslims cannot inherit from one another), and many Dutch women believed it to be relevant when Moroccan or Egyptian courts decided on child custody after divorce or death of a spouse. Many Dutch women shared stories of formally converting to Islam as a safety measure for child custody or safeguarding their inheritance if their spouse should die. However, it must be noted that while most conversions we came across could be described as instrumental, people often had multiple aims, such as acceptance by their family-in-law, wanting to share their spouse’s faith, or an interest in spirituality. For example, a Dutch man who married in Egypt spoke about his conversion as part of an entertaining anecdote rather than a life-changing religious event:

It was so easy. I sat next to a couple from the US. The wife married an Egyptian and wanted to become Muslim because he wanted her to. She did not know anything of [the religion] either. She wore a little silk scarf over her hair which kept falling off, and she put it back on, giggling all the time. ... And at some point he [religious official] asked: "Do you know what Islam is about?" And I said something like: "Well, more or less." And she [the American woman] as well. And he [religious official] said: "The most important thing is that you do not believe Jesus is God." And we said: "We don't believe that." "OK, that's all right then. Please repeat." And then he started saying some sentences in Arabic and we had to repeat them in Arabic, more or less phonetically, and then we got our certificate (René, August 2009).

For him, the conversion was a necessary step in the legal work required to get married in Egypt, including spending several days arranging all the paperwork, finding the right offices, and getting the right stamps. It was also a compromise at the relational level. His religious wife accepted that he was not religious, as long as he did not remain Christian. Before getting married she insisted that their children would be raised as Muslims, to which the husband agreed. Thus, conversion to Islam could be a practical solution for material reasons as well as for relational and ethical concerns. This is where the three forms of wellbeing come together.

While some interlocutors or their social environment put religious value on marriage, religious considerations seemed to be of limited importance in dealing with divorce. Almost all the interlocutors divorced in their country of residence, regardless of their views on its legal system or the fairness of its divorce procedures. While some interlocutors referred to religious or cultural norms on divorce, these norms did not seem to translate into specific choices during the legal process of divorce, such as divorcing in Morocco or Egypt rather than in the Netherlands, or asking Dutch judges for accommodation of religious norms. For example, a mixed couple of a Moroccan man and a Dutch woman living in the Netherlands had taken great care in writing a marriage contract which would be legally valid in both countries.¹³ Fitting with the Moroccan family code at the time, they chose complete separation of spousal property. However, after the divorce, they ignored this contract and amicably arranged to equally split their property, as is customary in the Netherlands, and divided assets such as furniture according to their needs. In the interview, the Dutch wife recalled how surprised she was by her husband's insistence that she should keep her dower (*mahr*):

In the [marriage] contract there had to be a dower, at least according to the Moroccan norms of [marriage year, 1970s]. In the end we decided that [husband] had bought a 15-volume encyclopaedia. It was very expensive back then It was his, but he thought it would be a nice, symbolic dower for me, not just because of the monetary value, but

because of the symbolic value So when we separated I suddenly got the encyclopaedia. I thought, "you need it more than I do", but no, he insisted: "This is yours" (Eva, January 2010).

For this husband, making sure his former wife kept her dower was an ethical issue, separate from the material issue of division of other property. Similarly, while some interlocutors felt that their former spouse did not handle the divorce in accordance with their religious norms, none took action by involving religious authorities in their divorce or having religious or cultural norms addressed in their court cases.

As these examples illustrate, one of the most important findings of our study is that family members navigated a complex web of demands from their social environment, legal requirements, family relationships, and religious and cultural norms, dealing with the law and bureaucracy as they went along. As we also saw, dealing with multiple bureaucracies across borders is not easy. It requires different kinds of resources: financial resources, the ability to travel, knowledge of dealing with bureaucracy, and transnational networks. Furthermore, access to and use of these resources was often connected to inequalities based on nationality and gender. In the next section, we will look further into how these factors and inequalities have impacted the ways in which transnational families dealt with bureaucracy and law.

Inequalities in transnational families

The interactions of transnational families with multiple legal systems and the possibilities of reaching their goals are strongly influenced by the resources accessible to them. These resources can effectively be divided into three kinds of capital as distinguished by Bourdieu (1986): economic capital, social capital, and cultural capital. Whether and how people had access to these forms of capital was influenced by their social position, which could be different in the countries of settlement and origin. In particular, nationality was a major source of inequality, as not all nationalities provide equal access to other resources. Aptly termed 'hierarchical citizenship' by Castles (2005), differences shape the legal work necessary for maintaining transnational family ties, as visas for Europe can be difficult for Moroccan and Egyptian nationals to obtain, while Dutch nationals can easily travel within and outside Europe.

Next, we discuss the three forms of capital, economic, cultural, and social, in relation to transnational families dealing with the law.

First, economic capital was important for the legal work entailed in managing 'kin work'. For example, obtaining documents in two countries and having them translated and legalized for use in the other country can be a costly affair. Securing documents also often involves travelling across borders. Travelling costs were a major obstacle, especially in the past, before the introduction of cheap flights. Hence, for some of the older interlocutors, travelling to their country of origin was a rare event. Even within Morocco or

Egypt travelling long distances can be costly and complicated. For example, while local Egyptian couples can marry in any city, marriage with a foreigner can only be concluded at a specific office in Cairo. The distances between the capital and the homes of people interviewed often meant that doing such legal work required multiple days away from a job or care responsibilities, as well as costs for travel and hotels. Such costs prevented some family members from arranging legal issues.

Second, dealing with bureaucracy requires cultural capital in the form of specific knowledge and experience. What is important here is not so much legal knowledge, but rather the awareness that something needs to be done and how it needs to be done. This requires not only language capability and knowledge of how and where to find information, but also embodied knowledge on how to behave and interact with 'the people of the law' such as civil registrars, lawyers, or judges. For transnational families in this study, such cultural capital was unequally distributed within the family as members had grown up in different countries. Those who had grown up in the country where things needed to be arranged were in a privileged position. We found that many of the interviewed family members took this into account by assigning the legal work to the spouse with the most experience of that particular system. Gender also played a role here, especially in Morocco and Egypt, where bureaucracy is generally dealt with by husbands and fathers, and women tend to have less experience in this field.

Third, we found that social capital played an important role in dealing with complex bureaucracies. Family members and friends living in countries of origin and settlement could provide important support in acquiring legal information and documents. However, the use of these family relations was not unconditional, and at times there was a lack of support, for example, when family members opposed a marriage or divorce.

Dutch-Moroccan families, in particular, made use of professional actors, such as NGOs and translators, for whom dealing with transnational families is an important part of their job. When migration law issues came up, professional support was particularly indispensable.

For example, Dutch-Moroccan Samira had migrated to Morocco with her parents when she was 17. Once in Morocco, she could not continue her education because she lacked the required Arabic language skills. After a while, she gave in to her parents' pressure to marry a Moroccan family member. After an unhappy marriage, her husband divorced her and she wanted to return to the Netherlands, where she had been born, had friends, and felt at home. However, her return was complicated as she had never acquired Dutch citizenship, and in her absence she had lost her residence rights. Dutch friends helped her contact a specialized office in Morocco that provided legal services and translations for Moroccan migrants from the Netherlands. The office guided her through the many steps needed to start the procedure for renewal of her residence permit in the Netherlands. The first step was to convince her ex-husband to hand over her passport. After the passport turned out to be

valid for only a few more months, it needed to be renewed, for which a birth certificate was required. As Samira had been born in the Netherlands, she needed to travel to Rabat for the document. For Samira, who had never visited the capital before, and had been kept mostly indoors by her husband, this was a big step:

Well, [director of specialized office] arranged it all for me, because I was so scared. ... It's as if you're on the street on your own for the first time. I was alone and I was afraid. ... Well, and then I went to Rabat. ... and it turned out there was a problem with my birth certificate. Because my name, our last name, here in Morocco was not the same name as was written in [her Dutch birth certificate] (Samira, November 2009).¹⁴

Samira had to start a Moroccan court procedure to have the spelling mistake in her Dutch birth certificate corrected. She could then finally apply for a new passport, and apply for renewal of her residence permit in the Netherlands.

This example demonstrates that, at times, specialist expertise of multiple legal systems and family law as well as migration law is called for. Regular Moroccan or Dutch lawyers often lack the necessary knowledge of two legal systems, even if Samira had had the financial means to hire one. Moreover, the availability of the necessary expert knowledge is, depending on the specific transnational context, not obvious. Whereas there is a strong network of NGOs, specialized lawyers, and private offices active between Morocco and the Netherlands (Sportel, 2011), the Dutch-Egyptian context lacks such a strong field of specialized legal aid. This difference can be explained by variation in size, visibility, and level of organization of the migrant communities involved. Hence, established larger migrant communities have easier access to specialized help for legal needs in complex situations than smaller or newer communities.

Conclusion

In this chapter, we aimed to contribute to the literature on transnational families by drawing attention to the role of law. As we have shown, law is of great importance for the wellbeing of transnational families. Living a family life across borders requires dealing with multiple laws and bureaucracies. Our most important finding is that people navigate the law, taking legal steps and finding legal information as they go along. Mistakes are made and confusion arises along the way. Moreover, rather than acting from a single interest or aim, there were several interconnected factors contributing to their wellbeing in multidimensional ways. Our findings indicate that the transnational families in our study did not interact strategically with the law to maximize material gain. Rather, their interests were relational, taking on complicated and often expensive legal work and finding compromises on normative issues in order to manage kin ties across borders. Travelling, visits, and enabling family

and friends to attend important life events such as marriage ceremonies may all require extensive legal work. As such, legal work was often kin work.

Dealing with law requires several kinds of resources. Family members need economic, social, and cultural capital to deal with multiple bureaucracies. Existing inequalities in terms of nationality and gender thus impact the possibilities of transnational family members achieving their aims. Furthermore, the opportunity structures present in the different transnational contexts are also of importance in understanding differences in transnational family members' abilities to navigate the law.

We have also demonstrated the importance of a law-in-everyday-life approach in investigating the relationship between the law and the well-being of transnational families. Looking at law in everyday life shifts attention to the importance (and cost) of legal work, of forms, translations, and bureaucracy. Approaching the law from the everyday life of transnational families also requires transcending boundaries between different fields of law. People's experiences with the law are shaped by all their interactions with a legal system. For transnational families, especially family law and migration law interact in shaping people's experiences. Furthermore, a law-in-everyday-life approach allows for a more nuanced picture of transnational families and their needs and wishes. Studies on transnational families and the law often make assumptions on how transnational families seek accommodation of their religious or cultural values by legal systems. However, as we have shown, transnational families navigate multiple aims, demands, and aspirations, and their religiosity or transnational ties cannot be presupposed based on ethnicity. Future studies on the wellbeing of transnational families should take these complexities into account to get a fuller grasp of their lived reality.

Notes

- 1 While we consider the term 'second-generation migrants' quite problematic, it is commonly used in Dutch official and policy documents and statistics. We put the term between inverted commas to indicate its problematic character.
- 2 We use the terms 'mixed marriages' and 'mixed couples' in spite of their problematic character. As all marriages contain aspects of sameness and difference, it is only those differences that are marked as significant, especially by the social environment, that make a marriage mixed (Waldis, 2006). The marker of difference for mixed couples in this article is 'ethnicity' and/or 'race'.
- 3 In 2015, there were 380,755 persons of Moroccan descent living in the Netherlands. Of this group, 212,304 are so-called second-generation, the majority of whom have two parents who were born abroad (CBS Statline, 2017). Statistically, 70% of the second generation marry a partner of Moroccan descent already living in the Netherlands. For women, 12% marry a partner from Morocco and 7% a native Dutch partner. For men, 7% of spouses are from Morocco and 12% native Dutch.
- 4 In 2015, 22,700 people of Egyptian origin were living in the Netherlands, of whom 12,776 were born in Egypt (first-generation migrants); 4,783 have two parents who were born abroad; and 5,141 are children of one Egyptian parent and one Dutch parent (CBS Statline, 2017).

- 5 Estimations made by representatives of the Dutch embassies in interviews in Rabat in October 2009 and Cairo in December 2010. As there is no obligatory registration, the Dutch authorities cannot provide exact information on how many Dutch emigrants live in Morocco and Egypt.
- 6 Interviews for the sub-project on parents and children were done by Friso Kulk while interviews for the sub-project on divorce were done by Iris Sportel. About half of the interviews with professional actors were done by Friso Kulk and Iris Sportel together, the others by one of these two researchers. A third sub-project concerned cross-border custody disputes; interviews in this project are not included in this contribution. The entire project was led by Betty de Hart and financed by a VIDI grant she received from the Netherlands Organisation for Scientific Research.
- 7 Two interlocutors had moved to another country after divorce. One of these interviews was conducted by phone, the other in person.
- 8 A large majority of mixed families consisted of a Dutch woman and a Moroccan or Egyptian man, five out of 44 consisted of Dutch men and Egyptian (2) or Moroccan (3) women.
- 9 Many of the interviews on parents and children were held with both parents.
- 10 Interlocutors were asked about the situation during the marriage. When there was no communal household this was mostly due to complications in migration procedures.
- 11 All names in this chapter are pseudonyms.
- 12 In 2015, 44% of babies born in the Netherlands had unmarried parents, with 52% of first children born out of wedlock (CBS Statline, 2017).
- 13 Technically, what this couple wrote was a pre-nuptial agreement with a notary, as the Netherlands does not have marriage contracts.
- 14 Part of this quotation is also used in Sportel, 2016, p.224.

Bibliography

- Ackers, L. and Dwyer, P., 2004. Fixed laws, fluid lives: The citizenship status of post-retirement migrants in the European Union. *Ageing and Society*, 24(3), pp.451–475.
- Bakker, L.G.H., Gehring, A.J., Mourik, K.van, Claessen, M.M., Harmsen, C. and Harmsen, E., 2010. *Sharia in Nederland. Een studie naar islamitische advisering en geschilbeslechting bij moslims in Nederland* [Sharia in the Netherlands. A study on Islamic consultation and conflict resolution among Muslims in the Netherlands]. Nijmegen: Radboud Universiteit Nijmegen, Instituut voor Culturele Antropologie en Ontwikkelingsstudies / Radboud Universiteit Nijmegen, Instituut voor Rechtssociologie/WODC.
- Baldassar, L., 2007. Transnational families and aged care: The mobility of care and the migrancy of ageing. *Journal of Ethnic and Migration Studies*, 33(2), pp.275–297.
- Behbehanian, L., 2000. Policing the illicit peripheries of Egypt's tourism industry. *Middle East Report*, 30(3), pp.32–34.
- Bourdieu, P., 1986. The forms of capital. In: J. Richardson, ed. *Handbook of Theory of Research for the Sociology of Education*. New York: Greenwood, pp.241–258.
- Castles, S., 2005. Hierarchical citizenship in a world of unequal nation-states. *PS: Political Science and Politics*, 38(4), pp.689–692.
- CBS Statline database, 2017. Available at: <http://statline.cbs.nl/Statweb/> [Accessed February 17, 2017].
- Dreby, J., and Adkins, T., 2010. Inequalities in transnational families. *Sociology Compass*, 4(8), pp.673–689.

- Eeckhout, V. van den, 2000. De wisselwerking tussen materieel en internationaal privaatrecht: eenrichtings- of tweerichtingsverkeer? [The interplay between substantive law and private international law: One-way traffic or two-way traffic?]. *Rechtskundig Weekblad*, 63(37), pp.1249–1265.
- Eeckhout, V. van den, 2003. Gelijkheid in het internationaal privaatrecht. Een kritiek op de gangbare structurering van het debat [Equality in private international law. A critique on the common structures of the debate]. *Nemesis*, 19(5/6), pp.177–189.
- Foblets, M.-C.S.F.G., 1997. Conflicts of law in cross-cultural family disputes in Europe today: Who will reorient conflicts of law? *The Comparative and International Law Journal of Southern Africa*, 30(1), pp.22–36.
- Foblets, M.-C., 1998. *Marokkaanse migrantenvrouwen in gezinsgeschillen: wat zijn passende juridische oplossingen?* [Moroccan migrant women in family conflicts: What are fitting legal solutions?]. Antwerpen: Maklu.
- Foblets, M.-C. and Verhellen, J., 2000. Marokkaanse migrantenvrouwen in gezinsgeschillen. Wat zijn passende juridische oplossingen? [Moroccan migrant women in family conflicts: What are fitting legal solutions?] *Recht van de Islam*, 17, pp.90–115.
- Gardner, K. and Grillo, R., 2002. Transnational households and ritual: An overview. *Global Networks*, 2(3), pp.179–190.
- Hart, B. de, Rossum, W. van and Sportel, I., 2013. Law in the everyday lives of transnational families: An introduction. *Oñati Socio-Legal Series*, 3(6), pp.991–1003.
- Hegel-Cantarella, C. 2011. Kin-to-be: Betrothal, legal documents, and reconfiguring relational obligations in Egypt. *Law, Culture and the Humanities* 7(3), pp.377–393.
- Hoekema, A.J. and Rossum, W.M.van, 2010. Empirical conflict rules in Dutch legal cases of cultural diversity. In: M.-C. Foblets, J.-F. Gaudreault-Desbiens and A. Dundes Renteln, eds. 2010. *Cultural Diversity and the Law: State Responses from Around the World: Proceedings of the Colloquium “The Response of State Law to the Expression of Cultural Diversity”*, Brussels, September 2006. Bruxelles: Bruylant, pp.851–888.
- Horst, H.A., 2006. The blessings and burdens of communication: Cell phones in Jamaican transnational social fields. *Global Networks*, 6(2), pp.143–159.
- Jansen Frederiksen, K., 2011. Mahr (dower) as a bargaining tool in a European context: A comparison of Dutch and Norwegian judicial decisions. In: R. Mehdi and J. S. Nielsen, eds. 2011. *Embedding Mahr in the European Legal System*. Copenhagen: DJØF Publishing, pp.147–190.
- Kruiniger, P., 2015. *Islamic Divorces in Europe: Bridging the Gap between European and Islamic Legal Orders*. Den Haag: Eleven International Publishing.
- Kulk, F., 2013. *Laverend langs grenzen. Transnationale gezinnen en Nederlands en islamitisch familie – en nationaliteitsrecht* [Navigating across borders. Transnational families and Dutch and Islamic family and nationality law]. Nijmegen: Wolf Legal Publishers.
- Leonardo, M.di, 1987. The female world of cards and holidays: Women, families, and the work of kinship. *Signs: Journal of Women in Culture and Society*, 12(3), pp.440–453.
- Levitt, P. and Jaworsky, B.N., 2007. Transnational migration studies: Past developments and future trends. *Annual Review of Sociology*, 33, pp.129–156.
- Levitt, P., and Glick Schiller, N. 2004. Conceptualizing simultaneity: A transnational social field perspective on society. *International Migration Review*, 38(3), pp.1002–1039.
- Mazzucato, V. and Schans, D., 2011. Transnational families and the well-being of children: Conceptual and methodological challenges. *Journal of Marriage and Family*, 73(4), pp.704–712.

- Menski, W., 2001. Muslim law in Britain. *Journal of Asian and African Studies*, 62, pp.127–163.
- Morano-Foadi, S., 2007. Problems and challenges in researching bi-national migrant families within the European Union. *International Journal of Law, Policy and the Family*, 21(1), pp.1–20.
- Mulla, S. 2011. Introduction to forging family: Legal documents as new kinship technologies. *Law, Culture and the Humanities*, 7(3), pp.352–358.
- Rutten, S., 2004. Recognition of divorce by repudiation (talaq) in France, Germany and the Netherlands. *Maastricht Journal of European and Comparative Law*, 11, pp.263–285.
- Sportel, I., 2011. Transnational divorce in Dutch-Moroccan families: The semi-autonomous social field of legal aid. *Recht der Werkelijkheid*, 32(3), pp.37–51.
- Sportel, I., 2016. *Divorce in Transnational Families: Marriage, Migration and Family Law*. London: Palgrave MacMillan.
- Sportel, I., 2017. Who's afraid of Islamic family law? Dealing with sharia-based family law systems in the Netherlands. *Religion & Gender*, 7(1), pp.53–69.
- Storms, O. and Bartels, E., 2017. The reform of the Moroccan family law and women's daily lives: Navigating between structural constraints and personal agency. In: L. Touaf, S. Boutkhil and C. Nasri, eds. 2017. *North African Women after the Arab Spring: In the Eye of the Storm*. London: Palgrave MacMillan, pp.191–209.
- Tilly, C., 2007. Trust networks in transnational migration. *Sociological Forum* 22(1), pp.3–24.
- Vertovec, S., 2004. Migrant transnationalism and modes of transformation. *International Migration Review*, 38(3), pp.970–1001.
- Vigh, H., 2009. Motion squared: A second look at the concept of social navigation. *Anthropological Theory*, 9(4), pp.419–438.
- Waldis, B., 2006. Introduction: Marriage in an era of globalisation. In: B. Waldis and R. Byron, eds. *Migration and Marriage. Heterogamy and Homogamy in a Changing World*. Berlin: Lit Verlag, pp.1–20.
- Wilding, R., 2006. 'Virtual' intimacies? Families communicating across transnational contexts. *Global Networks*, 6(2), pp.125–142.
- Yilmaz, I., 2002. The challenge of post-modern legality and Muslim legal pluralism in England. *Journal of Ethnic and Migration Studies*, 28(2), pp.343–354.
- Yngvesson, B., 2006. Backed by papers: Undoing persons, histories, and return. *American Ethnologist*, 33(2), pp.177–190.
- Zontini, E., 2004. Immigrant women in Barcelona: Coping with the consequences of transnational lives. *Journal of Ethnic and Migration Studies*, 30(6), pp.1113–1144.